

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3410 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMBHAI RUMLABHAI RATHWA

Versus

STATE OF GUJARAT

Appearance:

MR DT SONI for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 11/12/96

ORAL JUDGEMENT

1. This petition has arisen in the following circumstances. The petitioner who belongs to Scheduled Tribe was employed as Workcharge Chowkidar at Rami Irrigation Project dam site since 1972 on daily wage basis. Such employment continued upto 1981. From 1981, the petitioner was appointed on 29 days basis on a monthly salary of Rs.196/- plus all the admissible

allowances. After the petitioner has completed ten years service, he was called for interview in 1982 and he was appointed as Chowkidar on work charge basis with effect from 15.1.1983, vide order dated 19.1.1983. While the petitioner was serving as Workcharge Chowkidar, by an order passed in June 1985 by order No. 186 of 1985 petitioner's services were terminated forthwith on the ground that petitioner does not hold educational qualifications of 4th Std. The petitioner challenged the said order inter alia on 2 grounds, firstly, that the order has been made in arbitrary and unreasonable manner affecting his right under Articles 14 and 21 and secondly that order is in violation of Section 25F of the Industrial Disputes Act, the services were terminated without payment of retirement compensation or notice pay.

2. No return has been filed until now. The notice of the petition was issued on 18.6.1985 directing interim relief in terms of Para 10(C) of the petition which reads as under:

"(C) Pending the admission, hearing and final disposal of this writ petition, the Hon'ble Court may be pleased to restrain the respondents Nos.2 and 3 from terminating the petitioner's services or from operating the orders of termination and to restrain the respondents Nos.2 and 3 from interfering with the discharge of his duties by the petitioner as a Workcharge Chowkidar and to direct the respondents Nos.2 and 3 to pay the petitioner salary regular from month to month"

After service of notice Rule was issued on 21.1.1986 and interim relief in the aforesaid term was allowed to continue.

3. The undisputed position which emerges in the aforesaid facts and circumstances are that the petitioner's services were terminated forthwith without payment of retrenchment compensation or notice pay as one month's notice in advance was not given. The petitioner was employed as 'Chowkidar' at the dam site. The Irrigation Department and its works undoubtedly constitute an industry and would be within the meaning of Section 2(j) of the Industrial Disputes Act in view of the decision in Bangalore Water Supply and Sewerage Board v. A. Rajappa reported in AIR 1978 SC 548, Section 25J of the Industrial Disputes Act gives an overriding effect to the provisions of Chapter VA of the Industrial Disputes Act over any other law including standing orders made under the Industrial Employment Standing Orders Act,

1946 except where the provisions of any other Act or Rules, Orders or Notifications issued thereunder or under any Standing Orders or under any award, concept of service or otherwise, a workman is entitled to benefits which are more favourable to him than to which he is entitled under the Industrial Disputes Act. Section 25F mandatorily requires that before a valid retrenchment can take place, workman must be given one month's notice in writing indicating the reasons for retrenchment or he is paid in lieu of such notice, wages for the period of notice and that he is paid at the time of retrenchment compensation which shall be equal to fifteen days average pay for every completed year of continuous services, or in part thereof in excess of six months. These two conditions are cumulative. If there is breach of any of these two conditions, the retrenchment is invalid. This alone is sufficient to invalidate the impugned order.

4. Even otherwise, termination of service after thirteen years of service from the post of Chowkidar on the ground of lack of educational qualification under the circumstances, is arbitrary and unreasonable. In the matter of daily rated workman, whose services were sought to be terminated after long period on the ground of lack of minimum prescribed qualification. The Supreme Court in Bhagwati Prasad v. Delhi State Mineral Development Corporation reported in AIR 1990 SC 371 said :

"The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications."

The ratio of the aforesaid decision is fully applicable to the facts of the present case. Accordingly, this petition succeeds. The impugned order No. 186 of 1985 at Annexure B is quashed. Since, the

petitioner was allowed to continue in service by way of interim order and he is continued in service, no order need be passed in respect of backwages. Rule made absolute. No costs.

(devu)